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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,505	04/15/2004	Michael Taft	P-6242-04-04	8578

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EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,505

Applicant(s)

TAFT ET AL.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to because no. 26 in Fig. 3 lacks a reference line.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Specification

2. The disclosure is objected to because of the following informalities:

Page 5, line 17, "36" should be replaced with --26--.

Page 6, line 18, "26" should be replaced with --46--.

Page 6, line 20, "44" should be replaced with --32--.

Page 6, line 21, "enclose" should be replaced with --cover--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, line 2, the term "said fire ant trap" lacks positive antecedent basis.

In regard to claim 1, lines 2 and 3, the phrase "a thin walled enclosure lower rim for..." renders the claim vague and indefinite since the thin walled enclosure is not being initially set forth. The phrase should be rewritten as "a thin walled enclosure having a lower rim for..."

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In regard to claim 1, lines 3 and 4, the phrase “for embedding in the ground for attaching...” renders the claim vague and indefinite and the term “and” should be inserted between “ground” and “for attaching”.

In regard to claim 1, lines 6 and 7, the phrase “a beveled end adjacent said rim” renders the claim vague and indefinite since it is not clearly recited that the “beveled end” is a part of the “auger assembly”. The phrase should be rewritten as “an auger assembly projecting through said opening and having a beveled end adjacent said rim”.

In regard to claim 1, lines 7 and 8, the term “said tubular member” lacks positive antecedent basis.

In regard to claim 1, line 9, the term “said” should be inserted before “beveled end”.

In regard to claim 2, line 4, “the” before “periphery” should be changed to “a”.

In regard to claim 2, line 16, the term “said beveled tip portion” should be inserted before “penetrates” since it is unclear what is penetrating the mound.

In regard to claim 2, line 19, the phrase “art for dispersing” should be replaced with “ant and for dispersing said agent” in order to claim the desired invention more clearly.

In regard to claim 3, lines 3 and 4, the phrase “inter-engaging... axially moving... tip portion... tubular member” should be rewritten as “inter-engaging

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with said threaded bore and wherein said tubular member is concurrently axially moved and said tip portion is rotated upon rotation of said tubular member” to more clearly claim the desired invention.

In regard to claim 5, line 1, the term “said cover member” renders the claim vague and indefinite since claim 2 recites both “a cover member...for engaging and surrounding the periphery of the mound” and “a cover member for sealing the dispensing opening”.

In regard to claim 5, line 2, the term “the surfaces of the cavity” renders the claim vague and indefinite since both “a cavity” for the cover member was previously set forth and “a cavity” at an upper end of the tubular member was set forth.

In regard to claim 6, the term “said threaded member” lacks positive antecedent basis.

In regard to claim 7, there are two recitations of claim 7, one of which is below the first instance and is not labeled and therefore one of these instances should be deleted. Also in regard to claim 7, the terms “said beveled tip portion”, “said peripheral rim”, “said upper position” lack positive antecedent basis. Possibly this claim should depend from claim 2.

In regard to claim 8, the term “said releasable means” lacks positive antecedent basis. Possibly this claim should depend from claim 2.

In regard to claims 9-12, the preamble phrase “The fire ant trap” lacks positive antecedent basis.

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In regard to claim 9, the terms "said stakes" and "said upper end" lack positive antecedent basis. Possibly this claim should depend from claim 2.

In regard to claim 10, the terms "the state" and "said lowered position" lack positive antecedent basis.

In regard to claim 11, the terms "said rim", "said raised stowed position" and "said lowered position" lack positive antecedent basis. Possibly this claim should depend from claim 2.

In regard to claim 12, the term "said cover member" lacks positive antecedent basis. Possibly this claim should depend from claim 2.

In regard to claim 13, line 4, the phrase "peripheral rim engaging" renders the claim vague and indefinite since it is unclear what is being engaged. It should be rewritten as "peripheral rim engaging a periphery of the mound".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rawls 6,026,609.

Rawls discloses an enclosure (26, 32) with a lower rim (lower part of 26 or 32); projecting means (edge of 32); an opening (opening in 26 shown in Fig. 3) surrounded

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by an annular collar (44) in a top portion of the enclosure; an auger assembly (28) with a beveled end (bottom of 28) adjacent the rim (the term "adjacent" is a relative term); threaded coupling means (28 is threadably coupled to 44 as shown in Fig. 3) cooperating between the tubular member and collar for concurrently axially advancing and rotating the beveled end into engagement with the mound (28 is capable of being rotated such that it advances axially downwardly at the same time); a passage (see Fig. 3) in the auger assembly; and cover means (66 closes the upper end of passage by limiting access thereto) for closing the passage.

In regard to claim 13, Rawls discloses axially downwardly shifting (when 28 is moved downward into the mound) and concurrently rotating the beveled tip into the mound (when the driver of the tractor is positioning 28 over the mound during driving to align the probe with the mound).

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Austin 2,874,657.

Austin discloses an enclosure (5) with a lower rim (lower part of 5); projecting means (edge of 5 or protruding corner of 5 capable of being embedded in the ground); an opening (opening in 5 shown in Fig. 2) surrounded by an annular collar (7) in a top portion of the enclosure; an auger assembly (4) with a beveled end (13) adjacent the rim (the term "adjacent" is a relative term); threaded coupling means (6, 12) cooperating between the tubular member and collar for concurrently axially advancing and rotating the beveled end into engagement with the mound (4 is capable of being rotated such that it advances axially downwardly at the same time); a passage (see Figs. 2, 3) in the

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auger assembly; and cover means (1 closes the upper end of passage by limiting access thereto) for closing the passage.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cunningham 551,527.

Cunningham discloses an enclosure (E) with a lower rim (lower inner edge of E); projecting means (x); an opening (opening in E shown in Fig. 2) surrounded by an annular collar (a) in a top portion of the enclosure; an auger assembly (B) with a beveled end (see Fig. 2) adjacent the rim (the term "adjacent" is a relative term); threaded coupling means (see Fig. 2) cooperating between the tubular member (b) and collar (a') for concurrently axially advancing and rotating the beveled end into engagement with the mound (B is capable of being rotated such that it advances axially downwardly at the same time); a passage (see Fig. 2) in the auger assembly; and cover means (A closes the upper end of passage by limiting access thereto) for closing the passage.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawls 6,026,609 in view of Ryan 5,031,355.

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Alternatively in regard to claims 1 and 9, Rawls does not disclose projecting means comprising a plurality of stakes or mechanically attaching the enclosure to the ground. Ryan discloses a plurality of stakes (116) for embedding in the ground and attaching an enclosure (110) to the ground. It would have been obvious to a person of ordinary skill in the art to modify the enclosure of Rawls such that it has a plurality of stakes in view of Ryan in order to provide means for maintaining the position of the enclosure with respect to the ground.

In regard to claim 7, Rawls and Ryan disclose a tip portion (tip of 120 of Ryan) located above peripheral rim (of 110) in a lowered position.

In regard to claim 8, Rawls and Ryan disclose releasable means (112, 114).

10. Claims 1, 9, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawls 6,026,609 in view of Rhodes 5,152,097.

Alternatively, Rawls does not disclose projecting means comprising a plurality of stakes or mechanically attaching the enclosure to the ground. Rhodes discloses a plurality of stakes (12) for embedding in the ground and attaching an enclosure (10, 20) to the ground. It would have been obvious to a person of ordinary skill in the art to modify the enclosure of Rawls such that it has a plurality of stakes in view of Rhodes in order to provide means for maintaining the position of the enclosure with respect to the ground.

11. Claims 1, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin 2,874,657 in view of Rugg et al. 2,028,688 or Gunn 1,979,541.

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Alternatively, Austin does not disclose projecting means comprising a plurality of stakes. Rugg et al. and Gunn discloses a plurality of stakes (40 OR 24) for embedding in the ground and attaching an enclosure (7 OR 20, 21) to the ground. It would have been obvious to a person of ordinary skill in the art to modify the enclosure of Austin such that it has a plurality of stakes in view of Rugg et al. or Gunn in order to provide means for maintaining the position of the enclosure with respect to the ground.

Allowable Subject Matter


12. Claims 2-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733 or (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA